

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1113**

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**Introduced by Senator Wolk**

February 17, 2010

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An act to amend ~~Section 23036~~ *Sections 19048, 19334, and 19346* of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1113, as amended, Wolk. ~~Taxation: corporation taxes. Franchise Tax Board: tax administration: tax appeals.~~

*Under existing law the State Board of Equalization serves as a quasi-judicial body for deciding appeals from actions of both the Franchise Tax Board and the State Board of Equalization. If a taxpayer disagrees with the decision of the State Board of Equalization, that taxpayer may, after payment of the disputed tax liability, appeal the final decision of the board by filing a claim for refund with the superior court in any city or city and county in which the Attorney General has an office. Existing law does not specifically authorize the Franchise Tax Board to appeal a final decision of the State Board of Equalization.*

*This bill would, for determinations issued by the State Board of Equalization on or after January 1, 2011, authorize the Franchise Tax Board to bring an action for a trial de novo in superior court to determine the deficiency amount, the amount of refund or credit, or allowance of interest that was the subject of the determination of the State Board of Equalization. This bill would also authorize a taxpayer to file a motion to change the venue to a venue closer to the taxpayer's principal residence or principal place of business.*

~~The Corporation Tax Law imposes a tax according to, or measured by, income derived from or attributable to sources within this state.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 19048 of the Revenue and Taxation Code*  
2     *is amended to read:*

3     19048. (a) The board's determination becomes final upon the  
4     expiration of 30 days from the time of the determination unless  
5     within the 30-day period the taxpayer or the Franchise Tax Board  
6     files a petition for rehearing with the board. In that event the  
7     determination becomes final upon the expiration of 30 days from  
8     the time the board issues its opinion on the petition.

9     (b) (1) *Notwithstanding any other provision of law, within 90*  
10    *days after the determination of the board becomes final, the*  
11    *Franchise Tax Board may file a suit in superior court to determine*  
12    *the deficiency. A suit in superior court to determine a deficiency*  
13    *shall be a trial de novo by the court as to law and facts, there shall*  
14    *be a rebuttable presumption that the notice of action of the*  
15    *Franchise Tax Board with respect to the protest of a proposed*  
16    *deficiency assessment is correct, and the taxpayer shall have the*  
17    *burden of proof that the notice of action of the Franchise Tax*  
18    *Board is incorrect.*

19    (2) *Any action filed by the Franchise Tax Board under this*  
20    *subdivision shall be commenced and tried in any city or city and*  
21    *county in which the Attorney General maintains an office. A*  
22    *taxpayer may file a motion to change the venue of any suit filed*  
23    *under this subdivision to a venue closer to the taxpayer's principal*  
24    *residence or principal place of business and the motion shall not*  
25    *be opposed by the Attorney General or the counsel for the*  
26    *Franchise Tax Board.*

27    (3) *The amendments made to this section by the act adding this*  
28    *paragraph shall apply to determinations of the board issued on*  
29    *or after January 1, 2011.*

30    *SEC. 2. Section 19334 of the Revenue and Taxation Code is*  
31    *amended to read:*

32    19334. (a) The determination of the board is final upon the  
33    expiration of 30 days from the date of the determination unless

1 within the 30-day period, the taxpayer or Franchise Tax Board  
2 files a petition for rehearing with the board. In that event the  
3 determination becomes final upon the expiration of 30 days from  
4 the date the board issues its opinion on the petition.

5 *(b) (1) Notwithstanding any other provision of law, within 90*  
6 *days after the determination of the board becomes final, the*  
7 *Franchise Tax Board may file a suit in superior court to determine*  
8 *the overpayment. A suit in superior court to determine an*  
9 *overpayment shall be a trial de novo by the court as to law and*  
10 *facts, there shall be a rebuttable presumption that the notice of*  
11 *action of the Franchise Tax Board with respect to the refund claim*  
12 *is correct, and the taxpayer shall have the burden of proof that*  
13 *the notice of action of the Franchise Tax Board is incorrect.*

14 *(2) Any action filed by the Franchise Tax Board under this*  
15 *subdivision shall be commenced and tried in any city or city and*  
16 *county in which the Attorney General maintains an office. A*  
17 *taxpayer may file a motion to change the venue of any suit filed*  
18 *under this subdivision to a venue closer to the taxpayer's principal*  
19 *residence or principal place of business and the motion shall not*  
20 *be opposed by the Attorney General or the counsel for the*  
21 *Franchise Tax Board.*

22 *(3) The amendments made to this section by the act adding this*  
23 *paragraph shall apply to determinations of the board issued on*  
24 *or after January 1, 2011.*

25 *SEC. 3. Section 19346 of the Revenue and Taxation Code is*  
26 *amended to read:*

27 *19346. (a) The determination of the board is final upon the*  
28 *expiration of 30 days from the date of the determination unless*  
29 *within the 30-day period, the taxpayer or Franchise Tax Board*  
30 *files a petition for rehearing with the board. In that event the*  
31 *determination becomes final upon the expiration of 30 days from*  
32 *the date the board issues its opinion upon the petition.*

33 *(b) (1) Notwithstanding any other provision of law, within 90*  
34 *days after the determination of the board becomes final, the*  
35 *Franchise Tax Board may file a suit in superior court to determine*  
36 *the disallowance of interest. A suit in superior court to determine*  
37 *a disallowance of interest shall be a trial de novo by the court as*  
38 *to law and facts, there shall be a rebuttable presumption that the*  
39 *notice of action of the Franchise Tax Board with respect to the*  
40 *disallowance of interest is correct, and the taxpayer shall have*

1 *the burden of proof that the notice of action of the Franchise Tax*  
2 *Board is incorrect.*

3 (2) *Any action filed by the Franchise Tax Board under this*  
4 *subdivision shall be commenced and tried in any city or city and*  
5 *county in which the Attorney General maintains an office. A*  
6 *taxpayer may file a motion to change the venue of any suit filed*  
7 *under this subdivision to a venue closer to the taxpayer's principal*  
8 *residence or principal place of business and the motion shall not*  
9 *be opposed by the Attorney General or the counsel for the*  
10 *Franchise Tax Board.*

11 (3) *The amendments made to this section by the act adding this*  
12 *paragraph shall apply to determinations of the board issued on*  
13 *or after January 1, 2011.*

14 ~~SECTION 1.—Section 23036 of the Revenue and Taxation Code~~  
15 ~~is amended to read:~~

16 23036. (a) (1) ~~The term “tax” includes any of the following:~~

17 (A) ~~The tax imposed under Chapter 2 (commencing with Section~~  
18 ~~23101).~~

19 (B) ~~The tax imposed under Chapter 3 (commencing with Section~~  
20 ~~23501).~~

21 (C) ~~The tax on unrelated business taxable income, imposed~~  
22 ~~under Section 23731.~~

23 (D) ~~The tax on an “S” corporation imposed under Section 23802.~~

24 (2) ~~The term “tax” does not include any amount imposed under~~  
25 ~~paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)~~  
26 ~~of subdivision (f) of Section 24667.~~

27 (b) ~~For purposes of Article 5 (commencing with Section 18661)~~  
28 ~~of Chapter 2, Article 3 (commencing with Section 19031) of~~  
29 ~~Chapter 4, Article 6 (commencing with Section 19101) of Chapter~~  
30 ~~4, and Chapter 7 (commencing with Section 19501) of Part 10.2,~~  
31 ~~and for purposes of Sections 18601, 19001, and 19005, the term~~  
32 ~~“tax” also includes all of the following:~~

33 (1) ~~The tax on limited partnerships, imposed under Section~~  
34 ~~17935, the tax on limited liability companies, imposed under~~  
35 ~~Section 17941, and the tax on registered limited liability~~  
36 ~~partnerships and foreign limited liability partnerships imposed~~  
37 ~~under Section 17948.~~

38 (2) ~~The alternative minimum tax imposed under Chapter 2.5~~  
39 ~~(commencing with Section 23400).~~

1     ~~(3) The tax on built-in gains of an “S” corporation, imposed~~  
2     ~~under Section 23809.~~

3     ~~(4) The tax on excess passive investment income of an “S”~~  
4     ~~corporation, imposed under Section 23811.~~

5     ~~(e) Notwithstanding any other provision of this part, credits are~~  
6     ~~allowed against the “tax” in the following order:~~

7         ~~(1) Credits that do not contain carryover provisions.~~

8         ~~(2) Credits that, when the credit exceeds the “tax,” allow the~~  
9         ~~excess to be carried over to offset the “tax” in succeeding taxable~~  
10        ~~years, except for those credits that are allowed to reduce the “tax”~~  
11        ~~below the tentative minimum tax, as defined by Section 23455.~~  
12        ~~The order of credits within this paragraph shall be determined by~~  
13        ~~the Franchise Tax Board.~~

14        ~~(3) The minimum tax credit allowed by Section 23453.~~

15        ~~(4) Credits that are allowed to reduce the “tax” below the~~  
16        ~~tentative minimum tax, as defined by Section 23455.~~

17        ~~(5) Credits for taxes withheld under Section 18662.~~

18     ~~(d) Notwithstanding any other provision of this part, each of~~  
19     ~~the following applies:~~

20        ~~(1) No credit may reduce the “tax” below the tentative minimum~~  
21        ~~tax (as defined by paragraph (1) of subdivision (a) of Section~~  
22        ~~23455), except the following credits:~~

23           ~~(A) The credit allowed by former Section 23601 (relating to~~  
24           ~~solar energy).~~

25           ~~(B) The credit allowed by former Section 23601.4 (relating to~~  
26           ~~solar energy).~~

27           ~~(C) The credit allowed by former Section 23601.5 (relating to~~  
28           ~~solar energy).~~

29           ~~(D) The credit allowed by Section 23609 (relating to research~~  
30           ~~expenditures).~~

31           ~~(E) The credit allowed by former Section 23609.5 (relating to~~  
32           ~~clinical testing expenses).~~

33           ~~(F) The credit allowed by Section 23610.5 (relating to~~  
34           ~~low-income housing).~~

35           ~~(G) The credit allowed by former Section 23612 (relating to~~  
36           ~~sales and use tax credit).~~

37           ~~(H) The credit allowed by Section 23612.2 (relating to enterprise~~  
38           ~~zone sales or use tax credit).~~

39           ~~(I) The credit allowed by former Section 23612.6 (relating to~~  
40           ~~Los Angeles Revitalization Zone sales tax credit).~~

1     ~~(J) The credit allowed by former Section 23622 (relating to~~  
2     ~~enterprise zone hiring credit).~~

3     ~~(K) The credit allowed by Section 23622.7 (relating to enterprise~~  
4     ~~zone hiring credit).~~

5     ~~(L) The credit allowed by former Section 23623 (relating to~~  
6     ~~program area hiring credit).~~

7     ~~(M) The credit allowed by former Section 23623.5 (relating to~~  
8     ~~Los Angeles Revitalization Zone hiring credit).~~

9     ~~(N) The credit allowed by former Section 23625 (relating to~~  
10    ~~Los Angeles Revitalization Zone hiring credit).~~

11    ~~(O) The credit allowed by Section 23633 (relating to targeted~~  
12    ~~tax area sales or use tax credit).~~

13    ~~(P) The credit allowed by Section 23634 (relating to targeted~~  
14    ~~tax area hiring credit).~~

15    ~~(Q) The credit allowed by Section 23649 (relating to qualified~~  
16    ~~property).~~

17    ~~(2) No credit against the tax may reduce the minimum franchise~~  
18    ~~tax imposed under Chapter 2 (commencing with Section 23101).~~

19    ~~(e) Any credit which is partially or totally denied under~~  
20    ~~subdivision (d) is allowed to be carried over to reduce the “tax”~~  
21    ~~in the following year, and succeeding years if necessary, if the~~  
22    ~~provisions relating to that credit include a provision to allow a~~  
23    ~~carryover of the unused portion of that credit.~~

24    ~~(f) Unless otherwise provided, any remaining carryover from a~~  
25    ~~credit that has been repealed or made inoperative is allowed to be~~  
26    ~~carried over under the provisions of that section as it read~~  
27    ~~immediately prior to being repealed or becoming inoperative.~~

28    ~~(g) Unless otherwise provided, if two or more taxpayers share~~  
29    ~~in costs that would be eligible for a tax credit allowed under this~~  
30    ~~part, each taxpayer is eligible to receive the tax credit in proportion~~  
31    ~~to his or her respective share of the costs paid or incurred.~~

32    ~~(h) Unless otherwise provided, in the case of an “S” corporation,~~  
33    ~~any credit allowed by this part is computed at the “S” corporation~~  
34    ~~level, and any limitation on the expenses qualifying for the credit~~  
35    ~~or limitation upon the amount of the credit applies to the “S”~~  
36    ~~corporation and to each shareholder.~~

37    ~~(i) (1) With respect to any taxpayer that directly or indirectly~~  
38    ~~owns an interest in a business entity that is disregarded for tax~~  
39    ~~purposes pursuant to Section 23038 and any regulations thereunder,~~  
40    ~~the amount of any credit or credit carryforward allowable for any~~

1 taxable year attributable to the disregarded business entity is limited  
2 in accordance with paragraphs (2) and (3):

3 (2) ~~The amount of any credit otherwise allowed under this part,~~  
4 ~~including any credit carryover from prior years, that may be applied~~  
5 ~~to reduce the taxpayer's "tax," as defined in subdivision (a), for~~  
6 ~~the taxable year is limited to an amount equal to the excess of the~~  
7 ~~taxpayer's regular tax (as defined in Section 23455), determined~~  
8 ~~by including income attributable to the disregarded business entity~~  
9 ~~that generated the credit or credit carryover, over the taxpayer's~~  
10 ~~regular tax (as defined in Section 23455), determined by excluding~~  
11 ~~the income attributable to that disregarded business entity. No~~  
12 ~~credit is allowed if the taxpayer's regular tax (as defined in Section~~  
13 ~~23455), determined by including the income attributable to the~~  
14 ~~disregarded business entity is less than the taxpayer's regular tax~~  
15 ~~(as defined in Section 23455), determined by excluding the income~~  
16 ~~attributable to the disregarded business entity.~~

17 (3) ~~If the amount of a credit allowed pursuant to the section~~  
18 ~~establishing the credit exceeds the amount allowable under this~~  
19 ~~subdivision in any taxable year, the excess amount may be carried~~  
20 ~~over to subsequent taxable years pursuant to subdivisions (d), (e),~~  
21 ~~and (f).~~

22 (j) (1) ~~Unless otherwise specifically provided, in the case of a~~  
23 ~~taxpayer that is a partner or shareholder of an eligible passthrough~~  
24 ~~entity described in paragraph (2), any credit passed through to the~~  
25 ~~taxpayer in the taxpayer's first taxable year beginning on or after~~  
26 ~~the date the credit is no longer operative may be claimed by the~~  
27 ~~taxpayer in that taxable year, notwithstanding the repeal of the~~  
28 ~~statute authorizing the credit prior to the close of that taxable year.~~

29 (2) ~~For purposes of this subdivision, "eligible passthrough~~  
30 ~~entity" means any partnership or "S" corporation that files its return~~  
31 ~~on a fiscal year basis pursuant to Section 18566, and that is entitled~~  
32 ~~to a credit pursuant to this part for the taxable year that begins~~  
33 ~~during the last year a credit is operative.~~

34 (3) ~~This subdivision applies to credits that become inoperative~~  
35 ~~on or after the operative date of the act adding this subdivision.~~